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Attorneys for Defendants  
CITY OF SANTA ROSA; RICH CELLI, an individual and  
Officer of the SANTA ROSA POLICE DEPARTMENT; TRAVIS MENKE,  
an individual and Officer of the SANTA ROSA POLICE DEPARTMENT;  
PATRICIA MANN, an individual and Officer of the  
SANTA ROSA POLICE DEPARTMENT; and JERRY SOARES,  
an individual and Officer of the SANTA ROSA POLICE DEPARTMENT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as  
Successor in Interest for RICHARD  
DESANTIS, deceased, and as Guardian ad  
Litem for DANI DESANTIS, a minor

Plaintiffs,

v.

CITY OF SANTA ROSA, JERRY  
SOARES, RICH CELLI, TRAVIS MENKE,  
PATRICIA MANN and DOES 1 through  
25, inclusive,

Defendants.

Case No. C 07-3386 JSW

**ANSWER TO FIRST AMENDED  
COMPLAINT**

**JURY TRIAL DEMANDED**

Defendants City of Santa Rosa; Jerry Soares, Rich Celli, Travis Menke and Patricia Mann  
jointly and severally answer the First Amended Complaint as follows and respectfully request a  
jury trial:

**I. JURISDICTION AND VENUE**

1. Answering paragraph 1 of the first amended complaint, these answering defendants  
admit that this action arises under Title 42 of the United States Code, Section 1983 and that  
jurisdiction is conferred upon this court by Title 28 of the United States Code Sections 1331 and

1 1343.

2 2. Answering paragraph 2 of the complaint, these answering defendants admit the  
3 allegations set forth therein.

4 **II. PARTIES**

5 3. Answering paragraph 3 of the first amended complaint, these answering defendants  
6 lack sufficient information and or belief to respond to said allegations and basing their denial on  
7 that ground deny the allegations set forth therein.

8 4. Answering paragraph 4 of the first amended complaint, these answering defendants  
9 lack sufficient information and or belief to respond to said allegations and basing their denial on  
10 that ground deny the allegations set forth therein.

11 5. Answering paragraph 5 of the first amended complaint, these answering defendants  
12 admit the allegations set forth therein.

13 6. Answering paragraph 6 of the first amended complaint, these answering defendants  
14 admit the allegations set forth therein.

15 7. Answering paragraph 7 of the first amended complaint, these answering defendants  
16 admit the allegations set forth therein.

17 8. Answering paragraph 8 of the first amended complaint, these answering defendants  
18 admit the allegations set forth therein.

19 9. Answering paragraph 9 of the first amended complaint, these answering defendants  
20 admit the allegations set forth therein.

21 10. Answering paragraph 10 of the first amended complaint, these answering defendants  
22 lack sufficient information and or belief to enable them to respond to the allegations set forth  
23 therein and basing their denial on that ground deny the allegations set forth in paragraph 10.

24 11. Answering paragraph 11 of the first amended complaint, these answering defendants  
25 admit that at all time alleged herein the Defendant Officers were acting under color of law and in  
26 the course and scope of their employment with the City. Except as expressly admitted herein,  
27 defendants deny the remaining allegations set forth in paragraph 11

28 12. Answering paragraph 12 of the first amended complaint, these answering defendants

1 deny the allegations set forth therein..

2 **III. STATEMENT OF FACTS**

3 13. Answering paragraph 13 of the first amended complaint, these answering defendants  
4 lack sufficient information and/or belief to enable them to respond to the allegation set forth  
5 therein and basing their denial on that ground deny each of the allegations set in paragraph 13  
6 and the whole thereof.

7 14. Answering paragraph 14 of the first amended complaint, these answering defendants  
8 admit that Richard DeSantis fired shots into the ceiling of his residence and that his wife called  
9 911. Defendants further admit that one of the things that she advised the 911 operator of was  
10 that her husband was bipolar. Defendants specifically deny that she asked for medical assistance  
11 or advised the 911 operator that she had secured the gun. Except as specifically admitted or  
12 denied herein, defendants lack sufficient information and/or belief to enable them to respond to  
13 the remaining allegation set forth in paragraph 14 and basing their denial on that ground deny the  
14 remaining allegations set forth in paragraph 14.

15 15. Answering paragraph 15 of the first amended complaint, these answering defendants  
16 admit that shortly after the 911 call was made, several police officers arrived at the DeSantis  
17 residence. Except as expressly admitted herein, defendants deny the remaining allegations set  
18 forth in paragraph 15.

19 16. Answering paragraph 16 of the first amended complaint, these answering defendants  
20 admit that Richard DeSantis and his wife, holding their two year old daughter, were outside of  
21 the house when the officers arrived and that an officer ordered Richard DeSantis to approach  
22 them. Except as expressly admitted herein, these answering defendants deny the remaining  
23 allegations set forth in paragraph 16.

24 17. Answering paragraph 17 of the first amended complaint, these answering defendants  
25 deny the allegations set forth therein and the whole thereof.

26 18. Answering paragraph 18 of the first amended complaint, these answering defendants  
27 specifically deny the allegations set forth therein and the whole thereof.

28 19. Answering paragraph 19 of the first amended complaint, these answering defendants

1 specifically deny each and every allegation set forth in paragraph 19 and the whole thereof.

2 20. Answering paragraph 20 of the first amended complaint, these answering defendants  
3 deny the allegations set forth therein.

4 **IV. STATEMENT OF DAMAGES**

5 21. Answering paragraph 21 of the first amended complaint, these answering defendants  
6 specifically deny each and every allegation set forth therein and the whole thereof.

7 22. Answering paragraph 22 of the first amended complaint, these answering defendants  
8 specifically deny the allegations set forth therein and the whole thereof.

9 23. Answering paragraph 23 of the first amended complaint, these answering defendants  
10 specifically deny the allegations set forth therein and the whole thereof.

11 24. Answering paragraph 24 of the first amended complaint, these answering defendants  
12 specifically deny the allegations set forth therein and the whole thereof.

13 25. Answering paragraph 25 of the first amended complaint, these answering defendants  
14 specifically deny the allegations set forth therein and the whole thereof.

15 26. Answering paragraph 26 of the first amended complaint, these answering defendants  
16 specifically deny that plaintiffs are entitled to an award of attorneys fees. Except as expressly  
17 denied herein, these answering defendants lack sufficient information and/or belief to enable  
18 them to answer the remaining allegations set forth therein and basing their denial on that ground  
19 deny the remaining allegations set forth in paragraph 26.

20 **FIRST CAUSE OF ACTION**

21 **(42 U.S.C. Section 1983- Excessive Force)**

22 27. Answering paragraph 27 of the first amended complaint, these answering defendants  
23 refer to and incorporate by reference their responses to paragraphs 1 through 26, inclusive as  
24 though fully set forth herein.

25 28. Answering paragraph 28, these answering defendants specifically deny the allegations  
26 set forth therein and the whole thereof.

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**SECOND CAUSE OF ACTION**

**(42 U.S.C. Section 1983)  
(Against Defendant CITY OF SANTA ROSA)**

29. Answering paragraph 29 of the first amended complaint, these an answering defendants refer to and incorporate by reference their there responses to paragraphs 1 through 28, inclusive as though fully set forth herein.

30. Answering paragraph 30 of the first amended complaint, these answering defendants deny each and every allegations set forth therein and the whole thereof.

**THIRD CAUSE OF ACTION**

**(42 U.S.C. Section 1983–Deliberate Indifference)**

31. Answering paragraph 31 of the first amended complaint, these answering defendants refer to and incorporate by reference their responses to paragraphs 1 through 30, inclusive as though fully set forth herein.

32. Answering paragraph 32, these answering defendants deny each and every allegation set forth therein and the whole thereof.

**FOURTH CAUSE OF ACTION**

**(42 U.S.C. Section 1983–Deliberate Indifference)  
(Against Defendant CITY OF SANTA ROSA)**

33. Answering paragraph 33 of the first amended complaint, these answering defendants refer to and incorporate by reference their responses to paragraphs 1 through 32, inclusive as though fully set forth herein.

34. Answering paragraph 34, these answering defendants deny each and every allegation set forth therein and the whole thereof.

**FIFTH CAUSE OF ACTION**

**(42 U.S.C. Section 1983)  
(DEPRIVATION OF FAMILIAL RELATIONSHIP)  
(Against all Defendants)**

35. Answering paragraph 35 of the first amended complaint, these answering defendants refer to and incorporate by reference their responses to paragraphs 1 through 34, inclusive as

1 though fully set forth herein.

2 36. Answering paragraph 36, these answering defendants deny each and every allegation  
3 set forth therein and the whole thereof.

4 **SUPPLEMENTAL STATE CLAIM**

5 **SIXTH CAUSE OF ACTION**

6 **(WRONGFUL DEATH-C.C.P. §377.60)**

7 37. Answering paragraph 37 of the first amended complaint, these answering defendants  
8 refer to and incorporate by reference their responses to paragraphs 1 through 36, inclusive as  
9 though fully set forth herein.

10 38. Answering paragraph 38 of the first amended complaint, these answering defendants  
11 deny each of the allegations set forth therein and the whole thereof.

12 **AFFIRMATIVE DEFENSES**

13 39. At all times herein mentioned, defendants, and each of them, acted in good faith and  
14 believed that they were acting properly within the law and are therefore immune from liability  
15 and entitled to the application of qualified immunity.

16 40. Plaintiffs fail to allege facts sufficient to state a cause of action against these  
17 answering defendants.

18 41. Defendant City of Santa Rosa is immune from punitive damages pursuant to the  
19 provisions of California Government Code § 818, and provisions of federal law.

20 42. Defendants, and each of them, acted within their scope of discretion, in good faith,  
21 with due care, and pursuant to applicable rules, regulations and practices, which were reasonably  
22 and in good faith believed to be in accordance with the Constitution and laws of the United  
23 States, and that defendants therefore are immune from liability.

24 43. All acts of defendants MANN, CELLI, SOARES and MENKE occurred in the  
25 proper exercise of police powers.

26 44. Decedent acted in violation of California law, thereby causing the injuries of the  
27 plaintiff, if any there were.

28 45. The decedent, Richard DeSantis, was at fault and negligent in the matters set forth in

1 the First Amended Complaint, and said fault and negligence contributed to and was the  
2 proximate cause of plaintiff's injuries and damages, if any there were. Plaintiffs' recovery must  
3 be diminished to the extent of said fault and negligence.

4 46. To the extent that any force was used during the incident complained of, it was  
5 privileged as being reasonably necessary, and as being believed to be reasonably necessary, in the  
6 lawful defense of the officers and third parties.

7 47. To the extent that any force was used in detaining Richard DeSantis, it was privileged  
8 as necessary to effect the detention, to prevent escape, or to overcome resistance.

9 48. If, and to the extent that the allegations of the complaint attempt to enlarge  
10 upon the facts and contentions set forth in plaintiffs' claim, said complaint fails to state a cause  
11 of action and violates the provisions of California Government Code, Chapter I (commencing  
12 with section 900) and Chapter II (commencing with section 910). Defendants reserve the right to  
13 move to strike such allegations.

14 49. Defendants are immune from liability to plaintiffs pursuant to the provisions  
15 of California Government Code §§ 815, 815.2, 815.6, 818.6, 818.8, 820.2, 820.4, 820.6, 820.8,  
16 821, 821.4, 821.6, 821.8, and 822.2.

17 WHEREFORE, defendants pray for judgment as follows:

- 18 1. That plaintiff take nothing by her complaint;  
19 2. That attorney's fees and costs be awarded to defendants; and  
20 3. For such further relief as the Court deems proper.

21 **DEMAND FOR JURY TRIAL**

22 Defendants, jointly and severally, hereby demand a jury trial in this action.

23  
24 Dated: November \_\_\_\_, 2007

25 \_\_\_\_\_  
Caroline L. Fowler  
Assistant City Attorney  
Attorney for Defendants  
City of Santa Rosa, Santa Rosa Police Officers Rich  
26 Celli, Travis Menke, Jerry Soares and Patricia Mann  
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